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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/625,017	07/25/2000	David LeVine	JMBDP002	7171

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EXAMINER

HAYES, JOHN W

ART UNIT	PAPER NUMBER
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3621

DATE MAILED: 09/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/625,017

Applicant(s)

LEVINE, DAVID

Examiner

John W Hayes

Art Unit

3621

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 08 September 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

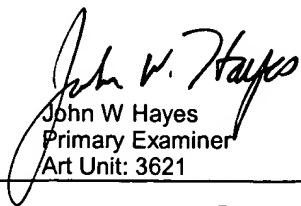
Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-15 and 20.

Claim(s) withdrawn from consideration: _____.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____


John W Hayes
Primary Examiner
Art Unit: 3621

Continuation of 2. NOTE: The newly added limitations to claims 1 and 20 in the after final amendment would require further consideration and/or search since they have not previously been considered. Examiner submits that a thorough search of the prior art has been conducted relating to the subject matter of the claimed invention, however, it would be impossible for the examiner to anticipate future amendments to the claimed invention and conduct a search for any anticipated amendments to the claimed invention. Furthermore, the MPEP clearly states that, once a proper final rejection has been entered in an application, applicant or patent owner no longer has any right to unrestricted further prosecution. Amendments that will place the application either in condition for allowance or in better form for appeal may be entered (MPEP 714.12). Neither of these cases is true for the present application. The claims are not in condition for allowance since the newly added limitations have not yet been considered or searched. Also, examiner submits that the newly added limitations raise a new issue rather than placing the claims in better form for appeal. The MPEP further states that if an amendment necessitates a new search, raises the issue of new matter, presents additional claims without cancelling a corresponding number of finally rejected claims, or otherwise introduces new issues, it will not be entered (MPEP 1207). Examiner submits that the additional limitations added to claims 1 and 20 relating to "the report being a sample of the prior use" changes the scope of the claims sufficiently enough as to require a new search and, therefore, the amendment will not be entered. Applicant further states that the amendment should be entered for purposes of appeal. Examiner respectfully disagrees with this assertion since the amendments to the claims add additional limitations that have not been previously considered and, therefore, do not place the application in better form for appeal, but rather, raise a new issue. .